IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

:

vs. : Crim. No.1:CR-24-261

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ESTER MBAYA :

DEFENDANT'S MEMORANDUM IN AID OF SENTENCING & MOTION FOR DOWNWARD VARIANCE

Ester Mbaya, through her undersigned counsel Joel E. Benecke, respectfully submits the following Sentencing Memorandum in the above cited case. The defense respectfully requests that this Honorable Court sentence Ms. Mbaya to a sentence of less than 36 months.

FACTS AND PROCEDURAL HISTORY

Ms. Mbaya and undersigned Counsel agree with the facts as laid out in the Guilty Plea entered into before this Court on October 15, 2024, and does not wish to alter nor change any of the facts to which Ms. Mbaya has already acknowledged.

By way of procedural history, in June of 2023, Ms. Mbaya received a target letter U.S. Department of Justice pertaining to an ongoing investigation into potential charges related to Bank Fraud and Health Care Fraud. Upon receiving notice of this letter, Ms. Mbaya notified undersigned counsel and made arrangements to meet with representatives from the Department of Justice and the Pennsylvania office of Attorney General. Ms. Mbaya and counsel met with these representatives on at least two (2) occasions to discuss the allegations.

On September 27, 2024, a two-count information was filed against Ms. Mbaya, with

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Count 1 pertaining to Health Care Fraud in violation of 18 U.S.C. § 1347 and Count 2 pertaining to Bank Fraud in violation of 18 U.S.C. § 1344.

On October 15, 2024, Ms. Mbaya appeared in front of this Honorable Court at which time she waived any indictment and entered a plea of guilty to the above listed charges.

STATUTORY AND GUIDELINE ANALYSIS

Statutory Penalties

The U.S. Sentencing Commission Guidelines Manual used to calculate the guideline in the report is that incorporating amendments effective November 1, 2024.

As to Count I, 18 U.S.C. § 1347, Health Care Fraud, the maximum penalty is imprisonment for a period of ten (10) years, a fine of two-hundred and fifty thousand and 00/100 dollars (\$250,000.00), a maximum term of supervised release of three (3) years, to be determined by the Court and which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, the denial of certain federal benefits, and assessment in the amount of one hundred and 00/100 dollars (\$100.00).

As to Count II, 18 § 1344, Bank Fraud, the maximum penalty is imprisonment for a period of thirty (30) years, a fine of one million and 00/100 dollars (\$1,000,000.00), a maximum term of supervised release of five (5) years, to be determined by the Court, which shall be served at the conclusion of and in addition to any term of imprisonment, denial of certain federal benefits, and an assessment of one hundred and 00/100 dollars (\$100.00).

Guidelines Calculation

As agreed to by the parties in the Guilty Plea and as mandated by the Sentencing Guidelines, a base offense level of seven (7) applies pursuant to U.S.S.G. §2B1.1(a)(1). A

sixteen (16) level increase applies pursuant to U.S.S.G. §2B1.1(b)(1)(I), as the loss exceeded one million five hundred thousand and 00/100 dollars (\$1,500,000.00). A two (2) level increase applies pursuant to U.S.S.G. §2B1.1(b)(7) because the conviction at Count 1 is for a federal health care offense and the loss for the health care fraud offense is in excess of one million and 00/100 dollars (\$1,000,000.00).

A two (2) level reduction applies pursuant to U.S.S.G. §4C1.1(a) because Ms. Mbaya meets all ten (10) criteria for a Zero Point offender. An additional two (2) level reduction will apply pursuant to U.S.S.G §3E1.1(a) as Ms. Mbaya has not contested the facts, has cooperated with the investigation, and has taken full responsibility for her actions. Finally, another one (1) level reduction should apply pursuant to U.S.S.G §3E1.1(b) as Ms. Mbaya meets the criteria under subsection (a) and because Ms. Mbaya has assisted in the investigation and prosecution of her own misconduct by timely notifying the authorities of her intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

Based on the above calculations, and prior to the PSR, the parties had agreed that the total offense level was 20 with a criminal history category of I, which would result in a guideline range of 33 – 41 months of incarceration.

As the Court has surely noted, the PSR included an additional upward adjustment for Role in the Offense (See PSR, p. 10, ¶ 31) and specifically for abuse of a position of trust. This adjustment was not contemplated by either the Defense or the AUSA prior to the PSR.

While not contemplated by either party prior to the plea, counsel's duty of candor to the Court requires that we acknowledge that the case law does support the application of the upward adjustment and to argue otherwise would be misleading to the Court. While the Ms.

Mbaya believes the Court would be within the law and Its discretion in applying that 2-level upward adjustment, Ms. Mbaya nevertheless objects to its application as this adjustment was neither contemplated nor discussed by or between the parties prior to Ms. Mbaya entering her guilty plea. Ms. Mbaya acknowledges that this does not constitute a reason to withdraw the plea and nor has she had any intention to do so at any time.

As also noted in the PSR, if the Role in the Offense upward adjustment is applied, total offense level of 22 with a criminal history category of I results in an advisory sentencing guideline range of 41 to 51 months imprisonment.

SECTION 3553(a) FACTORS

18 U.S.C. § 3553(a), mandates that a Court "impose a sentence sufficient, but not greater than necessary, to comply with" federal sentencing goals. In imposing a sentence that is "sufficient, but not greater than necessary," the Court should look to the statutory factors listed under Section 3553. These factors include:

Nature and circumstances of the offense and the history and characteristics of the Defendant.

Nature and circumstances of the offense

The Defense agrees with the Government and the Probation Department's description of the nature and circumstances of the offense and does not wish to muddy the waters nor waste the Court's time by attempting to change those facts.

Ms. Mbaya is before the Court to admit to, and take responsibility for, her actions and behavior.

With that having been stated, Ms. Mbaya's pattern of conduct reflected an individual in financial difficulty that chose dishonest methods to provide for herself and for her family. Ms.

Mbaya, as is reflected by her financial background and review by the probation department, did not use these funds to lead any lavish lifestyle nor to purchase luxury items. Ms. Mbaya remained living in a modest home and community. These factors do not in any way diminish the seriousness of the crimes she committed but they should be considered by the Court when fashioning its sentence.

History and characteristics of the Defendant

Ms. Mbaya was born to Japhet Mbaya and Anne Karambu in Meru, Kenya on April 14, 1981. She was spent significant time as a child with her grandmother, as her parents were often away and working. Her father was a teacher and her mother performed clerical work. Ms. Mbaya has three adult siblings; a brother who is a farmer in Kenya, a sister who is in business development in California, and another sister who is a banker in California.

Ms. Mbaya's father was an alcoholic who would become violent when drinking and as a result Ms. Mbaya was both a victim of physical and emotion abuse from her father as well as a witness to her father's emotional and physical abuse of her mother. Ms. Mbaya's father died at age 53 from cirrhosis of the liver. Ms. Mbaya's mother splits residence between Kenya and the United States and Ms. Mbaya helps care for her mother when she in the United States.

Ms. Mbaya is married to Luciano Foya, whom she met in Kenya in the early 2000s.

Ms. Mbaya and Mr. Foya were married in 2005. Mr. Foya is a veteran of the United States

Army and obtained his U.S. Citizenship in 2012. Ms. Mbaya obtained her U.S. Citizenship in 2015.

The couple has two children. They informally adopted their daughter Anne Foya from Ms. Mbaya's brother when Anne was a baby. The arrangement was necessary because Ms. Mbaya's brother is an alcoholic like their father and was unable to care for the child. Anne's

biological mother left her when Anne was a baby. Due to these circumstances, Ms. Mbaya and Mr. Foya have raised Anne since she was a baby, and completed the formal adoption process in 2019. Anne had a healthy upbringing with Ms. Mbaya and Mr. Foya. She is now 20 years old and currently attending University in Kenya. Their son Ryan Foya is 15 years old and lives with Ms. Mbaya and Mr. Foya in Harrisburg where he attends high school.

Ms. Mbaya obtained her high school graduation equivalency in Kenya, and afterwards attended the United States International University in Nairobi where she earned a bachelor's degree in International Relations.

Since earning her degree, Ms. Mbaya has worked in various health care administration positions for home health care agencies and dialysis centers.

As noted above, Ms. Mbaya had somewhat difficult circumstances during her childhood due to emotional and physical abuse from her father who was an alcoholic. In addition to personal abuse, she also witnessed her father emotionally and physically abuse of her mother. That abuse is of course no excuse for Ms. Mbaya's crimes, but nonetheless represents childhood trauma that undoubtedly had an impact on Ms. Mbaya.

Despite that trauma, Ms. Mbaya has been able to construct and maintain a stable life with her husband, adopted daughter, and her son. She has provided a loving and supporting home to both of her children.

In addition, and as evidenced by the nearly two dozen letters of reference outlining Ms. Mbaya's character (attached hereto as Exhibit A), she has also been an extremely important part of her community. She has provided support and opportunities to fellow immigrants and especially to women in her community.

While it is often said that there are no bad people, just bad decisions, that is not always

the case. However, Ms. Mbaya is just such an example. She has no criminal history, and when confronted with the facts of her case, she voluntarily and repeatedly met with authorities to address these matters. She has not contested the facts and, in the case of the bank fraud charge has begun repaying some of her debts by entering into a repayment plan with Presence Bank (the victim with highest amount of damages) and has been repaying that debt in accordance with that agreement (see repayment agreement and payment history attached hereto as Exhibit B).

Ms. Mbaya has made grievous mistakes that are also serious crimes. She is presenting herself before this Court to address those life-changing mistakes and those crimes. She is aware of, and takes responsibility for, not just the harm she has caused the specific victims, but also the harm she has caused to society in general by acting in a way that undermines the trust that many place in our system of social safety nets.

Finally, while Ms. Mbaya has made efforts of substantial assistance to the Government in other investigations, the Government has not yet determined that to be significant enough to warrant a departure motion. Despite that, it should be noted that Ms. Mbaya has provided information to the government in an effort to assist them in intervening in other potentially criminal schemes involving other individuals in the health care industry.

The need for the sentence imposed to:

Reflect the seriousness of the crime.

The guidelines for this case call for 41 - 51 months. A slight variance by the Court to a sentence of less than 36 months would still reflect the seriousness of the offense.

Afford adequate deterrence to criminal conduct

A sentence of multiple years of incarceration in a federal prison, the imposition of

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collateral civil consequences, and the repayment of restitution of over three million three hundred thousand and 00/100 dollars (\$3,349,550.41 to be exact), all act as adequate deterrence to criminal conduct.

Protect the public from further crimes of the defendant

The criminal history of having a federal felony conviction, as well as the associated collateral civil consequences on Ms. Mbaya's record will almost certainly preclude her from gaining a license to conduct businesses or have authority to engage in the type of conduct that constitute the underlying criminal actions in this matter. Further, Ms. Mbaya's acknowledgement of guilt and full acceptance of responsibility as shown during the investigation, the guilty plea, and through sentencing are further evidence that she is aware of, and remorseful for her actions in a manner that demonstrates the extreme unlikelihood of future criminal conduct.

The need to avoid unwarranted sentencing disparities

Ms. Mbaya does not have any co-defendants in this matter and the current guideline ranges are in line with other similarly situated individuals accused of similar offenses.

CONCLUSION

For the reasons outlined above, and to allow her to quickly return to earning money to repay her debts to society, Ms. Mbaya pleads with the Court to sentence her to less than 36 months of incarceration followed by a period of Supervised Release.

Respectfully submitted,

/s/Joel E. Benecke
Joel E. Benecke
Counsel for Ester Mbaya

Date: February 20, 2025

CERTIFICATE OF SERVICE

I, Joel E. Benecke, counsel for the defendant, hereby certify that I have served copies of the Defendant's Sentencing Memorandum to the Honorable Julia K. Munley and Assistant U.S. Attorney Michael Consiglio via electronic filing and electronic mail.

/s/ Joel E. Benecke
Joel E. Benecke
Counsel for Ester Mbaya

DATE: February 20, 2025

Exhibit A

Alex Wachla

109 willow rd, Harrisburg, PA 17109

7176238911

Honorable Julie Munley

Harrisburg Court.

Dear Judge Munley.

I am writing to you regarding Esther Nkatha, who is currently before you in court. I have known Esther for over 10 years and consider her to be a close and trusted friend. I hope that my letter will provide you with a better understanding of her character and the positive impact she has had on those around her.

Throughout the time I have known Ether, I have always found her to be a person of Integrity, compassion, and responsibility. She has consistently demonstrated kindness and generos ty to others, often going out of her way to help those in need. She single handed y planned and hosted my wife's baby shower for my last born child 6 yrs ago without me asking her.

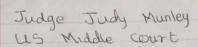
In addition to their personal qualities, Esther is also a dedicated and hardworking individual. She has shown a strong commitment to her business and has always been reliable, dependable and enterprising. Taking into account to her starting a dialysis clinic in Harrisburg, which was quite inspiring and eye opening for me.

I understand that Esther is currently facing legal issues, but I firmly believe that this does not reflect her true character. She has expressed genuine remorse for the actions and is committed to making amends. I am confident that given the opportunity, Etsher will take the necessary steps to learn from this experience and continue to be a positive influence in our community.

Thank you for taking the time to read my letter. I respectfully ask that you consider Esther's character and the positive qualities she possesses when making your decision. I am available to speak further about Esther if you require additional information.

Sincerely.

Alex Wachira



Re: Esther Mbaya

I have known Esther Mbaya for Many years. She is a very Pleasant Person and treats everyone with respect. We have both been members of a Prayer group where we read the bible and prayed together. Esther has been a well of wisdom and very resourceful.

Esther is always willing to help anyone in need, Whether spiritual, emotional or material. She is a good mother to her son and a dedicated member of Harrisburg Kenyan Community. It

It is my humble Prayer your honor, to view her case before your court centerty.

Yours faithfully Anastasia Kibunja Phone 40. 484-751-8595

COURT CHARACTER REFERENCE

Bishop Gabriel Kioi 1870 stiegel pike Myerstown, PA,17067 01/2/2025

TO WHOM IT MAY CONCERN

Dear Judge,,

I am writing this letter as a character reference for Esther Nkatha Mbaya. I have known Esther for a good number of years and am proud to say that she is a person of good character. In my experience, Esther Mbaya has always been an honest, handworking, and responsible individual. She is always willing to lend a helping hand to those in need, and I have seen first hand her dedication to the community, family and people in need of counsel.

In addition, Esther Mbaya has been an active member of the community, and she has always been involved in volunteer works particularly when disaster hits the community, she is always the first to give hand and also to donate financially.

I believe that Esther Mbaya is a valuable member of our society who has made a positive impact on those around her. I strongly recommend her as a person of good character who deserves leniency in her current legal situation.

If you have any further questions or require additional information, please do not hesitate to contact me.

Sincerely,

Bishop Gabriel Kioi

Christine Titih

President and Founder of Oaks Of Central PA

813 Erford Rd,

Camp Hill, PA 17011.

1/7/2025

Dear Judge Julie Munley,

Character Reference- Ester Mbaya.

I first met Ester Mbaya in October 2021 at an event (EmergeHer- connecting, empowering, educating and equipping minority women in business. www.oaksofcepa.com) I organized targeting minority women in business in the Greater Harrisburg area. 2021 was when the world was just coming out of covid-19 and many minority women were trying to find their way out and discover their purpose. Ester came to the event with positive energy and a zeal to help other women succeed in the ever so changing and challenging world of business.

Ester became a key pillar of EmergeHer movement. She opened the doors of her dialysis center to African immigrants and Dauphin County commissioners in celebration of the National Immigrant month in July 2023. She became an advocate- she appeared with me on Good Day PA to speak on the plight of minority women in business and to encourage them to connect with each other. She volunteered her time to be a speaker at the EmergeHer Business seminar and expo in Dec 2023-encouraging women and supporting other minority businesses.

Three words best describe Ester's character- resilience, positivity and support of others. Ester is resilient given all she went through. She always finds a way to bounce back. She has a legendary smile on her face and encourages others to keep the faith through tough times. She is a sister's keeper- supporting her African sisters and cheering them when others would rather stay in the background.

Please consider this character reference letter in making your decision.

Kindly reach out with any questions.

Thank you.

Christine Titih

Christine Titih

412-758-4761

oaksofcentrapa@gmail.com



Character

From jane Mwangi <shirojane@hotmail.com>

Date Mon 1/6/2025 1:03 PM

To Ms. Mbaya <mbaya@theserenityblue.com>

To Hon Julia K. Munley

My name is Jane Mwangi and a friend to Esther Mbaya for so many years.

I have seen this young lady transform her life and others. Esther started from a very humble beginning from walking to and from work to going for groceries by foot with her child on her back.

If there is one person who is generous with her time, recourses, friendship and kindness is Esther.

Esther single handedly helped one guy who was going to collapse into depression and become useless to a gentleman who was able to travel back home for his dad's sendoff. Had it not been for Esther's empathy, kindness and holding this guys hand from making sure he eats well, get medication, (since he is diabetics and needed insulin) have a roof on his head put his paperwork together he could have resulted homeless shelter dependant.

Esther has been there for an elderly couple who at times didn't have money to pay their morgage to getting them groceries and making sure they don't face foreclosures.

I can go on and on about her. She has funded for Kenyan community events to ensure there's enough funds to see the event go through and people get to celebrate their independence day, not once or twice, her selfless attitude makes her unique and one person to admire. She gives without expectations and without prejudice.

She is someone one can count on and depend on, she has no evil bone or malicious attitude in her, she can never harm a fly.

There is no negative thing one can say about Esther, her laugh and smile is infectious and she has a way of lighting a room up and making it warm.

For what's worth Esther is very instrumental in our community and if there's any way she can be pardoned it will bring joy to so many people. She is harmless.

Thanks sincerely yours

Jane Mwangi

Get Outlook for Android

CHARACTER REFERENCE LETTER

Joseph Ndaya

2220 Concord Circle,

Harrisburg, PA. 17110

01/07/2025

Judge Julie Munley,

RE: Ester Mbaya.

I, Joseph Ndaya, am writing this letter to provide a character reference for Ester Mbaya. I have known her for over 10 years; as a friend and a former employer.

I had the privilege of working closely with Ester and I am impressed with her unselfishness, kindness, and honesty. She has always been a positive influence in our community and beyond.

I urge you to consider Ester's character and be lenient when determining the case for her to continue serving in the community positively.

Thank you in advance for your time.

Sincerely,

Joseph Ndaya.

June Stone 6421 Charlton Ave Harrisburg 17112 01/08/2025

The Honorable Judge Juli Munley
Re: Character Reference for Esther

Dear Judge, Munley.

I am writing this letter to provide a character reference for Esther, whom I have had the privilege of knowing for several years. Esther is a devoted mother, a respected community leader, and an individual deeply committed to making a positive impact on the lives of others.

Throughout the time I have known her, Esther has consistently demonstrated her dedication to helping people in our community. Whether it's providing food, clothing, or furniture to those in need, she has made it her mission to support individuals and families facing challenges. Esther's generosity knows no bounds; she not only gives of her resources but also of her time and energy.

Esther is an inspiration to many women in our community, particularly businesswomen. She has assisted numerous women in starting their own businesses, offering guidance, resources, and connections to help them succeed. She is a natural mentor, always willing to direct others to the resources they need to achieve their goals.

Her contributions extend beyond her immediate network. Esther has supported local churches and has been instrumental in assisting families who are new to this country, helping them navigate the challenges of building a new life. Her compassion and leadership have left an indelible mark on our community.

Esther is a person of integrity, kindness, and unwavering commitment to serving others. Her actions speak volumes about her character, and she is someone who continually goes above and beyond to uplift those around her.

I strongly believe that Esther's character and dedication to her community reflect her values and the positive influence she has on those she interacts with. Please do not hesitate to contact me if you require further information.

Sincerely, june stone, 717-731-2992





I am writing this letter to provide a character reference for my dear...

From Lillian Walton <waltonlillian@icloud.com>

Date Mon 1/6/2025 8:19 PM

To Ms. Mbaya <mbaya@theserenityblue.com>

I am writing this letter to provide a character reference for my dear friend, Esther Mbaya. I have had the pleasure of knowing Esther for 10 years, during which time I have witnessed their exceptional character, integrity, and dedication in various personal and professional settings.

Esther is a person of high moral standards and unwavering honesty. She consistently demonstrate kindness, empathy, and respect toward everyone she encounter. These qualities are evident in her ability to foster meaningful relationships, work collaboratively, and support those around her in times of need.

In addition to her strong personal values, Esther is incredibly dependable and hardworking. I have seen her approach challenges with resilience and determination, always striving to achieve her goals with a positive attitude. Her ability to remain composed under pressure and her commitment to excellence make her an asset in any environment.

One instance that stands out is when over the years she has supported the Kenyan community organization in pa through financial, moral and physical support. This example reflects Esther's natural leadership skills and genuine care for others.

I wholeheartedly recommend Esther for any opportunity that requires a person of integrity, reliability, and compassion. I am confident that they will exceed expectations and bring immense value wherever they go.

Please feel free to contact me at 7175806829 or waltonsabroad@gmail.com. if you have any questions or would like additional information.

Thank you for considering this letter.

Sincerely, Lillian Walton

Sent from my iPhone

Lucia Kabiru

6131 Spring Knoll Dr Harrisburg, Pa 17111

01/08/2025

To Whom It May Concern:

It is with great pleasure that I write this character reference for my dear friend, Ester Mbaya. I have had the honor of knowing Ester for 3 years, and during this time, they have consistently demonstrated qualities that make them an exceptional individual and a cherished friend.

Ester is a person of remarkable integrity, kindness, and reliability. They have always been a source of support and inspiration, showing unwavering dedication to their responsibilities and an empathetic approach to everyone they encounter. Their ability to be a valuable asset to the community is truly commendable.

In addition to their personal attributes, Ester has made significant contributions to our community through creating jobs and serving our community. Their positive attitude and genuine care for others have earned them the respect and admiration of all who know them.

I have no doubt that Ester will continue to excel and make a positive impact in any endeavor they undertake. Their character, work ethic, and dedication make them an outstanding candidate for any opportunity they pursue.

If you require any further information, please feel free to contact me 717 775 0420 and misslkabiru@gmail.com

Sincerely, Lucia Kabiru

Dear Honorable Judge,

I am writing to you on behalf of my dear friend, Esther Mbaya, who is currently before this court. I've known Esther for 13years, and I respectfully ask that you take this letter into consideration as a testament to her good character, her selfless contributions to the community, and the integrity with which she has lived her life. She has an outstanding character by which she goes out of her way for others to be comfortable. She has been participating in our kenyan community to organize and have the community come together in times to celebrate their culture and in times of grief, through giving her time and monetary giving she has shown mercy to everyone who comes her way from any nationality.

Esther has a kind soul and is a compassionate young lady, family-oriented woman with a heart to serve those in need. She founded a home health company and later expanded to dialysis center that was in memory of her late dad who failed to get the services but she wanted to give to others the chance and provide essential care for vulnerable patients. Her work isn't just about running a business — it's about making a difference in the lives of others. Esther has gone above and beyond to ensure that her patients receive the highest quality care, often putting their needs before her own. Her employees talk high of her and how she helps them to get to work even when they do not have any means of transport, she will find a way to help them until they get stable, a unique person and very humbled, scarce character to come across.

Beyond her professional life, Esther is a devoted wife and mother to her son. She has her sickly, elderly, mother with whom needs her care and reminder for her medications every day. Despite the challenges she faces, Esther continues to be a source of strength and compassion to her family, mother and those around her. She carries the burdens of others quietly and with grace, embodying the values we hold dear as Christians — love, service, humility, and accountability.

I understand the seriousness of the charges brought against Esther. She fully respects the law and takes these matters gravely to heart, and she has been very remorseful and her heart bleeds with pain seeing what has become of the hard work and dream. If she made any unintentional mistakes in her role within her business, I can confidently say that they were not out of malice or greed, but rather human error in the face of overwhelming responsibilities. She has always taken great care to operate her businesses with honesty and fairness.

Esther's life is a reflection of her faith and her unwavering commitment to serving others. I know that she deeply regrets any unintended harm that may have resulted from decisions made in her business, and she is committed to making amends where necessary. Her heart has always been in the right place — to uplift her community, provide jobs, and offer critical healthcare services. Esther has been standing with those who her needy and stuck with any kind of addiction to support them to get treatment and transport even in her own painful situation she continues to help.

Your Honor, I humbly ask that you take Esther's character into account as you deliberate on this case. She is a person of integrity, a woman of faith, and someone who has positively impacted

countless lives. I have every confidence that she will continue to be a force for good in her community. Thank you for your time and for considering this letter.

With utmost respect, Marieta Ndaya

Phone: 717-461-1361

Email: marietahndaya@yahoo.com

Ms Alice Nimala
2024 Chestnut Street
Harrisburg PA 17104
nalice6843@gmail.com

Attention to Judge Julie Munley,

I am writing this letter to provide a character reference for my dear friend, Estha...... I have had the pleasure of knowing Estha for more than five years, during which time, I have witnessed her exceptional and brightly character, integrity, dedication in various personal and professional settings.

Estha is a person of high moral standards and unwavering honesty. She consistently demonstrates kindness, empathy, support and respect toward everyone she encounters. These qualities are evident in her ability to foster meaningful relationships, work, collaboratively, and support those around her in times and needs

In addition to her strong personal values, Estha is incredibly dependable and hardworking. I have seen her approach challenges with resilience and determination, always striving to achieve her goals with a positive attitude. Her ability to remain composed under pressure and her commitment to excellence make her and asset in any environment.

One instance that stands out is when I requested a financial support from about a water well construction for my village community back home. Always available to participate or support any project or event from for divers' communities.: Estha initiated a project to gather most of the business ladies for dinner, where we had opportunity to make valuable connections, build relationship and share ours experiences. This example reflects Estha natural leadership skills, positive energy and genuine care of others.

I wholeheartedly recommended Estha for any opportunity that requires a person of integrity, reliability and compassion. I am confident that will exceed expectations and bring immense value wherever she goes.

Please feel free to contact me at my email address: nalice6843@gmail.com if you have any questions or would like additional information.

Thank you for considering this letter.

Sincerely

Ms Alice Nimala.

Rachael White 6154 Tyler Drive Harrisburg, pa, 17112 717-395-8181 raqueltour@yahoo.com 01/09/2025

Judge Julia Munley Court of Common Pleas of Lackawanna County 227 Penn Ave, Scranton, PA 18503

Re: Character Reference for Ester Mbaya

Dear Judge Munley,

I am writing this letter to offer my heartfelt support for my friend, Ester Mbaya, whom I have had the privilege of knowing for several years. During this time, I have come to deeply respect her for the many admirable qualities she consistently demonstrates—both personally and professionally.

As a business owner, Ester has shown an exceptional work ethic, determination, and leadership. She runs Mission Health, where she not only provides valuable services but also creates jobs and supports the local economy. Her entrepreneurial spirit is matched by her unwavering commitment to excellence and her genuine care for her clients, employees, and partners.

In addition to her professional success, Ester is incredibly active within our community. She is an enthusiastic community organizer and event coordinator, consistently going above and beyond to plan and execute initiatives that bring people together. Her events are a reflection of her dedication to creating positive, inclusive spaces for people from all walks of life. Her diverse cultural background adds a unique perspective to her work and enables her to connect with and encourage people from all backgrounds.

Ester is also a dedicated family member and an exceptional mentor and adviser. She has always been a source of wisdom and guidance, offering advice not just in professional settings but also on personal matters. Her ability to listen and provide thoughtful, compassionate advice has made her a trusted mentor to many in our community. She actively encourages others to pursue their goals and achieve their dreams, serving as a role model for both her peers and younger generations.

Her generosity and willingness to help others have made her an invaluable part of our community. Whether it's lending a hand to someone in need, organizing community events, or offering her support to friends and neighbors, Ester is always ready to contribute. Her selflessness and genuine care for the well-being of others are qualities that set her apart.

In conclusion, I can say with confidence that ester is a person of outstanding character. She is trustworthy, compassionate, and deeply committed to the betterment of her community. I wholeheartedly support her and believe she will continue to make a positive impact wherever she goes. Should you need any further information, please don't hesitate to contact me at 717-395-8181.

Sincerely, Raquel White Jan 10th ,2025

Honorable Judge Julie Munley

Dear Judge Munley,

We are writing to you on behalf of our beloved sister, Ester Mbaya, to respectfully request leniency in her case. Ester is an extraordinary individual whose character and actions have had a profoundly positive impact on our family and community.

Ester is not just a loving person but generous to the core. She has a remarkable ability to give selflessly, often putting the needs of others before her own. Her generosity knows no bounds, and she has frequently given everything she has to help those in need, even if it means she is left with nothing.

As the anchor of our family, Ester plays a crucial role in maintaining peace and harmony. She is a natural peacemaker, always striving to resolve conflicts and ensure that everyone feels loved and valued, regardless of the circumstances. Her unwavering support and care for each family member have been a source of strength and comfort for us all.

Ester's dedication to checking in on everyone and making them feel appreciated is truly remarkable. She has an innate ability to uplift others, providing emotional support and encouragement during difficult times. Her presence brings a sense of calm and reassurance, and she has a unique talent for making people feel wanted and cherished.

Our neighbors, cousins, and everyone who knows Ester just love her. She is the most humble person you could ever meet, always treating others with kindness and respect. Her humility and genuine care for others have earned her the admiration and love of all who know her. She syncs effortlessly with the crowd and is extremely down to earth. You will find her in the farm like everyone else or in a charcoal kitchen, making everyone laugh with her contagious laugh.

When our father passed away, Ester made the selfless decision to stay out of school to help our mother. She ensured that we were all happy, settled in, and comfortable during such a difficult time. Her sacrifice and dedication to our family's well-being are a testament to her character and strength.

Currently, Ester is the primary caregiver for our mother, who has been ill for some time. She takes her to appointments, assists with her activities of daily living (ADLs) and instrumental activities of daily living (IADLs), and provides constant emotional support. Despite being the middle child, Ester checks on all our affairs back home and ensures that everything is running smoothly.

As a testament to how caring and loving she is, Ester adopted a child and has provided her with a quality education. She treats her with so much love and care that most people cannot. This act of

kindness further demonstrates Ester's selflessness and her commitment to making a positive impact on the lives of others.

Ester is also a go-getter. In memory of our father, she started a dialysis clinic in Harrisburg. She wanted her patients to be in an extremely comfortable and loving place, creating a state-of-the-art clinic as an immigrant woman in America. Her dedication to providing high-quality care and her entrepreneurial spirit are truly inspiring.

We, the siblings of Ester, cannot help but see the void that she will leave behind if incarcerated. Our family, including our own children, will be a mess without her. She is the glue that holds this family together. Ester is a loving mother to our nephew and niece, and we cannot imagine what her family will be without her.

We totally understand that she has made a mistake and absolutely do not condone her actions. However, we believe that this big misstep should not be what defines her, as she is so much more than that.

Ester is the most positive and resilient person we know. Despite all these challenges, she has shown grace and carried the day with so much light. We would hate to dim this positive spirit.

Judge Munley, please have mercy on her. Our sister has the most beautiful heart and is the most caring person we know. We kindly ask for your mercy by considering home confinement or probation. Ester helps her community and beyond, even assisting people she does not know. Our mother is very sick, and without Ester, we are not sure how her health will be. In full transparency, our mother has gone into depression upon hearing this news, adding to the illness she already has.

Ester's resilience and positivity have been evident since she was young. When our parents were struggling, she would sell eggs and make cupcakes to help buy food. Her determination to support our family during tough times is a testament to her character and strength.

Ester has built a beautiful family that would be lost without her. Her love and dedication to her family are unparalleled, and we cannot imagine the void her absence would create.

When we are going through tough times, Ester is the person we call. She offers the most positive encouragements that realign us and give us hope. Her ability to uplift and inspire us during difficult moments is invaluable.

Ester herself is battling some illnesses and is always in pain. Despite this, she continues to show strength and positivity, never letting her own struggles prevent her from helping others.

We firmly believe that Ester's actions and character reflect her genuine desire to contribute positively to society. She has demonstrated time and again her commitment to helping others and fostering a sense of community. We respectfully ask for your understanding and compassion in considering

leniency for Ester, as we believe she has the potential to continue making a positive difference in the lives of those around her.

Thank you for your time and consideration.

Sincerely,

Catherine Mbaya/Linda Mbaya/Thomas Mbaya-(Ester Siblings)

Stanley Maina 5915 Palmer Dr Harrisburg PA 17112-3159 01/06/2025

To Judge, Julie Munley

Subject: Character Reference for Easter Mbaya

I am writing to provide a character reference for Easter Mbaya, whom I have had the privilege of knowing for the past 13 years as a close and trusted friend. Throughout this time, I have been consistently impressed by her integrity, kindness, and dedication to others.

Easter is a person of outstanding character who actively contributes to her community through selfless service. She freely offers just and thoughtful advice to those in need, readily assists others without hesitation, and boldly takes on challenges to make a positive impact. These qualities are evident in her actions, reflecting her genuine care and unwavering commitment to helping others.

Her consistent involvement in volunteer work and her willingness to take initiative in both personal and community matters highlight her strong moral compass and reliability. Whether it's providing guidance, offering support, or stepping up in difficult situations, Easter embodies the qualities of a true leader and compassionate friend.

I understand the seriousness of the matters before the court and am confident in vouching for Easter's good character, trustworthiness, and dedication to justice and fairness.

Please do not hesitate to contact me at 508-958-0234,atnotka25@gmail.com if you require further information or wish to discuss this letter in more detail.

Thank you for your time and consideration.

Sincerely,
Stanley Maina

166895

11:22 AM

Stellah Makana 2552 Tiffany Lane Harrisburg, PA,17112 717-712-2350 smakana@planethhc.com 1.9.2025

Judge Julia Munley Court of Common Pleas of Lackawanna County 227 Penn Ave

Scranton, PA 18503

Re: Character Reference for Ester Mbaya

Dear Judge Munley,

I am writing to provide a character reference for my dear friend, Ester Mbaya, who I have had the pleasure of knowing for several years. Over the years, I have witnessed firsthand her remarkable qualities, her strong work ethic, and her commitment to her family, business, and community.

Ester Mbaya is a dedicated and responsible individual who owned and operated Serenity Blue Dialysis Care and Mission Health, where she demonstrated an impressive ability to balance the demands of entrepreneurship with her family and community responsibilities. As a business owner, she is not only a pillar of our local economy but also a trusted employer who has shown kindness and fairness to her employees.

In addition to her professional accomplishments, Ester Mbaya has been a deeply committed member of our community. She is actively involved in volunteering, supporting local charities, organizing events etc. Her contributions have made a positive impact, and her leadership and generosity are highly regarded by those around her.

Ester is also a devoted family member and a committed member of the Lord's Family Fellowship. Her faith plays an important role in her life, and her involvement in the church demonstrates her kindness, integrity, and care for others.

Based on my long-standing relationship with Ester, I can confidently say that she is a person of exceptional character. She has always acted with integrity and a sense of responsibility in all areas of her life. I have no doubt that she will continue to be a positive influence in both her personal and professional spheres.

Thank you for your time and consideration of this reference. Should you require any additional information, please feel free to contact me at 717-712-2350 or smakana@planethhc.com.

Sincerely, Stellah Makana. Stephen Njau 5306 Manayunk Rd, Harrisburg, PA 17109

The Honorable Judge Judge Julie Munley

Re: Reference for Esther.

Dear Judge Munley

I am writing to you a reference letter for Esther Mbaya currently before your court for sentencing. I am a close friend to Esther having known each other for the last 14 years. During this period, I have come to know her as a Wife to a loving husband, a Mother and a family pillar.

During the many interactions with Esther I have observed her with very unselfish characters such as loving, hardworking, compassionate, responsible, family-oriented, and not limited to being a community beacon of hope. She has consistently demonstrated excellent personal and ethical behavior or acts, such as community involvement, dedication to familys within and of far and also potrays a strong work ethic.

Esther has engaged in community building through self giving her time and resources to the needy as well as partnering with community leaders locally to mold young people to a responsible tomorrow.

While I understand that Esther is before you for sentencing, I therefore request of your remorse as well as your immeasurable advice to her in making right steps and decisions.

I respectfully ask the court to take into account Esther's positive qualities and potential for recourse when making the right determination for her sentence. I genuinely believe that with the right guidance and support, Esther will continue to contribute positively to her community and at large and learn from this experience.

Thank you for taking the time to consider my perspective on Esther Mbaya's. I trust in your wisdom and fairness as you make your decision.

Sincerely, Stephen njau. Community supporter.

Sylvia C. Foya Baltimore, Maryland

January 7, 2025

The Honorable Judge United States District Court Pennsylvania Middle District Court 235 N Washington Ave Scranton, PA 18503

Re: Letter to the Judge in Relation with the Court Sentencing of ESTER N. MBAYA USA vs. Ester N. Mbaya Case #: 1:24-cr-00261

Dear Honorable Sentencing Judge:

My name is Sylvia Foya, and I am Ester N. Mbaya's stepmother-in-law. On behalf of my family, I humbly come before the bench to ask your good office that you show utmost leniency in your choice of a sentence with respect to Ester N. Mbaya's criminal case. I am appealing and pleading for leniency in sentencing Ester N. Mbaya.

I can attest that Ms. Mbaya has shown sincere remorse for her infractions. She has accepted responsibility for her actions. I have known her since the early 2000s when she started dating my stepson, and in 2005 she married him. Your honor, Ms. Mbaya has always been a good person to me and my family. I know that Ms. Mbaya accepts and knows that she has done something wrong, and she understands that she needs to make reparations for it. She may have made bad decisions, but she is not a bad person.

Ms. Mbaya was a businesswoman and an employer to many individuals whose families depended on that source of income. Thus, she was well respected in her community. She is a wife and a mother to a minor child. Your honor, since Ms. Mbaya is neither a danger to herself nor to the community, the family hopes that her punishment should not be incarceration, but home confinement followed by probation and community service. Your honor, I hope you consider the preceding information in sentencing Ester N. Mbaya.

Thank you for accepting and taking the time to read my letter.

Respectfully Submitted,

Sylvia C. Foya
On behalf of myself and family



Re: Letter

From Ms. Mbaya <mbaya@theserenityblue.com>

Date Wed 1/8/2025 10:20 PM

To From Eden <info@fromedensalon.com>

Thank you Tiffany!

Get Outlook for iOS

From: From Eden <info@fromedensalon.com> Sent: Wednesday, January 8, 2025 10:18:46 PM To: Ms. Mbaya <mbaya@theserenityblue.com>

Subject: Letter

Tiffany E. Spriggs From Eden Salon 2553 Brindle Dr Suite 36 Harrisburg, PA 17110 1-8-25

TO WHOM THIS MAY CONCERN,

I am writing this letter to provide a character reference for Esther Mbaya who is due to appear in court. I have had the privilege of knowing Esther for the past eight years, during which time she has been a pillar of support in my life and career.

As a stylist, business owner, and woman navigating the challenges of entrepreneurship, I have benefited immensely from Esther's encouragement and unwavering belief in me. She has cheered me on during my highs and provided a steady shoulder during my lows. Her compassion, loyalty, and generosity are qualities that I, and many others, deeply admire.

While I understand that Esther is facing legal charges due to a mistake, I firmly believe that this moment does not define who she is at her core. She is a person of remarkable integrity and kindness, someone who has consistently shown herself to be dedicated to lifting others up and making a positive impact in her community.

Mistakes are a part of the human experience, and they offer us an opportunity to grow and evolve. I have no doubt that Esther has learned from this experience and is committed to making amends. Her character is not one of malice or ill intent, but rather one that exemplifies resilience and a desire to be better.

I hope that this letter can shed light on the exceptional person that Esther truly is. She has been an invaluable source of strength and encouragement in my life, and I am confident that she will continue to bring positivity and kindness to those around her.

Thank you for considering my words as a testament to Esther's character. Should you need further details or wish to discuss this matter, please feel free to contact me at 717-370-9366 or info@fromedensalon.com

Sincerely, Tiffany E. Spriggs Owner, From Eden Salon Veronica Reitz 6131 spring knoll Dr Harrisburg, PA 17111

01/08/2025

To Whom It May Concern,

I am writing this letter to provide a character reference for my dear friend Ester Mbaya. I have had the pleasure of knowing Ester Mbaya for 6 years, during which time I have witnessed their exceptional character, integrity, and dedication in various personal and professional settings.

Ester is a person of high moral standards and unwavering honesty. They consistently demonstrate kindness, empathy, and respect toward everyone they encounter. The qualities are evident in their ability to foster meaningful relationships, work collaboratively, and support those around them in time of need.

In addition to their strong personal values, Ester is incredibly dependable and hardworking. I have seen them approach challenges with resilience and determination, always striving to achieve their goals with a positive attitude. Their ability to remail composed under pressure and their commitment to excellence make them an asset in any environment.

I wholeheartedly recommend Ester for any opportunity that requires a person of integrity, reliability, and compassion. I am confident that they will exceed expectations and bring immense value whenever they go.

Please feel free to contact me at 717 919 2543 or <u>verkohsly@hotmail.com</u> if you have any questions or would like additional information.

Thank you for considering this letter.

Sincerely, Veronica Reitz

Exhibit B

FORBEARANCE AGREEMENT

This Forbearance Agreement (the Agreement") is entered into as of the 3 day of October 2024 between Presence Bank (the "Bank"), as lender, and Serenity Blue Limited Liability Company, Luciano Foya and Ester Mbaya, as co-obligors (collectively, the "Obligors"). The Bank and the Obligors may be referred to hereinafter collectively as the "Parties".

WHEREAS, on August 3, 2021, the Bank made a commercial loan to the Obligors in the original principal amount of \$750,000.00 (the "Loan") in accordance with the terms of that certain Loan Agreement between the Parties dated that same date (the "Loan Agreement"); and

WHEREAS, to evidence their obligation to repay the Loan, the Obligors executed and delivered to the Bank a promissory note dated August 3, 2021, in the original principal amount of \$750,000.00 (the "Note"), and payment of the Note was secured by a mortgage (the "Mortgage") on certain real property owned by Obligors Luciano Foya and Ester Mbaya (collectively, the "Individual Obligors") situate at 2232 Chatham Way, Harrisburg, Dauphin County, Pennsylvania (the "Mortgaged Property"); and

WHEREAS, prior to November 14, 2022, events of default arose under the Loan Agreement, the Note and the Mortgage (collectively, the "Loan Documents"), and as a result of those events of default the Bank elected to accelerate payment of all of the Obligors' obligations to the Bank under the Loan Documents; and

WHEREA, on February 28, 2023, the Bank confessed judgment against the Obligors in the Court of Common Pleas of Dauphin County Pennsylvania, Case No. 2023-CV-1384-NT, in the amount of \$567,219.05 (including post-judgment interest and other charges, the "Judgment"); and

WHEREAS, the Judgment remains unsatisfied; and

WHEREAS, on June 7, 2024, the Bank issued written notice to the Individual Obligors pursuant to Pennsylvania's pre-foreclosure notice statutes that the Bank intended to commence an action to foreclose on the Mortgage in order to sell the Mortgaged Property as Sheriff's sale if the events of default under the Loan Documents were not cured within 30 days of June 7, 2024; and

WHEREAS, the Obligors failed to cure the outstanding events of default that exist under the Loan Documents by September 14, 2024, after the Individual Guarantors' application for a loan from PHFA was denied on August 14, 2024; and

WHEREAS, the Obligors have requested the Bank to forbear from commencing an action to foreclose on the Mortgage; and

WHEREAS, in consideration of the Obligors' offer to make the forbearance payments described below, the Bank is willing to forbear from commencing an action to foreclose on the Mortgage and/or to take additional action to enforce the Judgment for a period of six (6) months. but only in accordance with the terms of this Agreement.

NOW, THEREFORE, intending to be legally bound hereby, the Bank and the Obligors Borrower agree as follows:

- 1. Acknowledgement of Outstanding Indebtedness; Waiver of Defenses, The Obligors hereby acknowledge and agree that as of September 30, 2024, the outstanding obligations owed to the Bank under the Loan Documents totaled \$594,347.72 (together with additional interest, costs, advances and attorneys' fees accruing or incurred after September 30, 2024, the "Debt"). The Obligors also acknowledge and agree that they have no defense to payment of the Debt any such defenses are hereby waived. The Obligors also acknowledge and agree that all of the Loan Document are valid and enforceable against them in accordance with their terms, and that the Judgment is valid and enforceable against them.
- 2. Monthly Forbearance Payments. The Obligors hereby agree to pay to the Bank six (6) consecutive monthly forbearance payments in the amount of \$2,500.00 each beginning on October 15, 2024, and continuing on the fifteenth (15th) day of each month thereafter through and including March 15, 2024. The monthly forbearance payments shall be applied to the Debt in the Bank's discretion.

- 3. Forbearance. So long as the Obligors make all of the payments required by Paragraph 2 above when due, the Bank agrees to forbear through March 31, 2025, from commencing an action to foreclose on the Mortgage or to take further action to enforce the Judgment. (the "Forbearance Period").
- 4. Events of Default; Remedies. The occurrence of any of the following shall be deemed to be an "Event of Default" under this Agreement without further notice: (i) the failure of the Obligors to pay any of the forbearance payments to the Bank required under this Agreement when due; (ii) the filing by or against any Obligor of any proceeding in bankruptcy, insolvency, or similar proceeding (and, in the case of any such proceeding instituted against an Obligor, such proceeding is not dismissed within 60 days of the commencement thereof); or (iii) any assignment by any Obligor for the benefit of creditors.

Upon the occurrence of an Event of Default, the Bank's obligation to forbear under this Agreement shall terminate immediately and without further notice, and upon such termination the Bank may: (a) commence a mortgage foreclosure action against the Individual Obligors to foreclose on the Mortgage and to sell the Mortgaged Property at sheriff sale; (b) commence additional proceedings to enforce and collect the Judgment; and/or (c) exercise from time to time any other rights or remedies the Bank may have against the Obligors under any of the Loan Documents or applicable law.

- 5. No Modification. No modification, amendment or waiver of any provision of this Agreement, or consent to any departure by the Obligors therefrom, shall be effective unless made in a writing signed by the Bank.
- 6. No Waiver. No delay or omission on the Bank's part to exercise any right or power arising hereunder shall impair any such right or power or be considered a waiver of any such right or power, nor shall the Bank's action or inaction impair any such right or power.
- 7. Entire Agreement. The Parties agree that this Agreement reflects all of the terms upon which the Bank has agreed to forbear from exercising its right to collect the accelerated Debt due under the Loan Documents and/or to enforce the Judgment.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Agreement as of the date first written above.

	PRESENCE BANK
	By: William Sayre Executive Vice President
	SERENITY BLUE LIMITED LIABILITY COMPANY
	By: Etkate
	Ester Mbaya, Executive Director
Witness	
Witness	Luciano Foya
	Elekatea
Witness	Ester Mbaya

LOAN PAYMENT NOTICE

PRESENCE BANK	STATEMENT DATE: 02/05/25		
185 EAST LINCOLN HIGHWAY	LOAN NO.:	103014822	
COATESVILLE PA 19320	UCC Business Assets		
(610) 384-8282	CURRENT DUE DATE: CURRENT AMOUNT DUE: TOTAL AMOUNT DUE:		
	AMOUNT PAID		
SERENITY BLUE LLC	REGULAR PAYMENT		
ESTER N MBAYA	ADD'L PRINCIPAL		
LUCIANO K FOYA	ADD'L ESCROW		
2405 LINGLESTOWN RD STE 1	LATE CHARGE		
HARRISBURG PA 17110-9429	TOTAL PAID		

(Please return this portion with payment.)

LOAN NO.: 103014822

PAYMENT DUE SUMMARY:

CURRENT PRINCIPAL DUE	0.00
CURRENT INTEREST DUE	2,500.00
CURRENT ESCROW DUE	0.00
TOTAL CURRENT PAYMENT DUE	2,500.00
DELINQUENT AMOUNT DUE	583,106.55
LATE CHARGE DUE	13,911.00
TOTAL AMOUNT DUE	599,517.55

PAYMENT MUST BE MADE ON OR BEFORE 02/28/2025.

ACCOUNT SUMMARY:

PRINCIPAL BALANCE	494,221.05
ESCROW BALANCE	0.00
CURRENT INTEREST RATE	8.50000
INTEREST PAID THIS YEAR	0.00
REAL ESTATE TAXES PAID THIS YEAR	0.00

TRANSACTION SUMMARY:

DATE	DESCRIPTION	TRANSACTION AMOUNT	PRINCIPAL/ INTEREST	ESCROW/ LATE CHG
01/16/2025	REGULAR PAYMENT	2,500.00	0.00 2,500.00	0.00
12/17/2024	REGULAR PAYMENT	2,500.00	0.00 2,500.00	0.00
11/19/2024	REGULAR PAYMENT	2,500.00	0.00 2,500.00	0.00